

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Document # \_\_\_\_\_

Smith

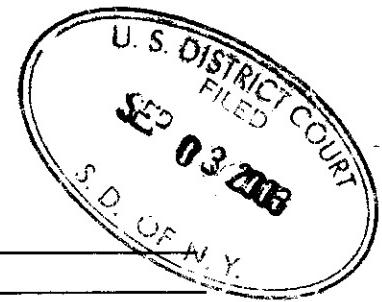
USCA NO. \_\_\_\_\_

-v-  
SDNY NO. 07cv7174  
JUDGE: JGK  
DATE: 9/3/2008

Conway

**INDEX TO THE RECORD ON APPEAL**

PREPARED BY (NAME) Nezam D.  
 FIRM APPEALS SECTION  
 ADDRESS UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NY  
500 PEARL STREET, NEW YORK, NEW YORK 10007  
 PHONE NO. (212) 805-0636



**DISTRICT COURT DOCKET ENTRIES -----**

DOCUMENTS	DOC#
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Clerk's Certificate

See Attached List of Numbered Documents

Only Circled Documents Included

Original Record

Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.  
for the Second Circuit on the 3<sup>rd</sup> Day of September, 2008.

**United States District Court for  
the Southern District of New York**

Andre Smith

Date: 9/3/2008

**U.S.C.A. #**

U.S.D.C. # 07cv7174

-V-

D.C. JUDGE JGK

James T. Conway

## Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 17, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

**Date Filed**

## **Document Description**

**\*\*Balance of Files Missing At This Time**

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York,  
this 3<sup>rd</sup> Day of September In this year of our Lord, Two Thousand and Eight, and the  
Independence of the United States this 233<sup>rd</sup> year.

**J. Michael McMahon, Clerk**

By   
Deputy Clerk

APPEAL, CLOSED, HABEAS, PRO-SE

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-07174-JGK**  
**Internal Use Only**

Smith v. Conway  
Assigned to: Judge John G. Koeltl  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 08/10/2007  
Date Terminated: 06/25/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus (General)  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
08/10/2007	1	PETITION FOR WRIT OF HABEAS CORPUS pursuant to 28 U.S.C. 2254. Document filed by Andre Smith.(laq) (Entered: 08/16/2007)
08/10/2007		Magistrate Judge Kevin N. Fox is so designated. (laq) (Entered: 08/16/2007)
08/24/2007	2	ORDER the Clerk of Court shall serve a copy of this Order and Petition, by certified mail, upon the District Attorney of New York County, and shall also send a copy of this Order, by certified mail, upon Andre Smith. The District Attorney shall answer or move with respect to the petition for habeas corpus within sixty (60) days from the date of receipt of this order. The petitioner's time to reply to the District Attorney's response shall be thirty (30) days after the receipt of the District Attorney's response. (Signed by Judge John G. Koeltl on 8/23/2007) (tve) (Entered: 08/31/2007)
08/30/2007	3	ORDER the Clerk of Court shall serve a copy of this Order and Petition, by certified mail, upon the District Attorney of New York County, and shall also send a copy of this Order, by certified mail, upon Andre Smith. The District Attorney shall answer or move with respect to the petition for habeas corpus within sixty(60) days from the date of receipt of this order. The petitioner's time to reply to the District Attorney's responses shall be thirty (30) days after the receipt of the District Attorney's response. (Signed by Judge John G. Koeltl on 8/27/2007) (tve) (Entered: 08/31/2007)
08/31/2007		Mailed a copy of 3 Order to Answer, to Andre Smith by Certified Mail # 7001 2510 0002 8738 0615 with Return Receipt Requested. (tve) (Entered: 09/04/2007)
08/31/2007		Mailed a copy of 1 Petition for Writ of Habeas Corpus, 3 Order to Answer, to the District Attorney of New York County by Certified Mail # 7001 2510 002 8738 0608 with Return Receipt Requested. (tve) (Entered: 09/04/2007)
08/31/2007		Mailed a copy of 2 Order to Answer, to Andre Smith by Certified Mail # 7001 2510 0002 8738 0806 with Return Receipt Requested. (tve) (Entered: 09/04/2007)
08/31/2007		Mailed a copy of 1 Petition for Writ of Habeas Corpus, 2 Order to Answer, to the District Attorney of New York County by Certified Mail # 7001 2510 0002 8738 0813 with Return Receipt Requested. (tve) (Entered: 09/04/2007)
09/14/2007		Received Return Receipt of Mail Order by Certified Mail as to Andre Smith, which was served by Certified Mail # 7001 2510 0002 8738 0806, on 9/12/07. (db) (Entered: 09/14/2007)
09/14/2007		Received Return Receipt of Mail Order by Certified Mail as to Andre Smith, which was served by Certified Mail # 7001 2510 0002 8738 0615, on 9/12/07. (db) (Entered: 09/14/2007)
09/19/2007	10	AFFIDAVIT of Andre Smith in Support re: 1 Petition for Writ of Habeas Corpus. Document filed by Andre Smith. (recvd in docketing on 9/9/08) (cd) (Entered: 01/11/2008)
10/04/2007		Received Return Receipt of Mail Order by Certified Mail as to the District Attorney of New York County, which was served by Certified Mail # 7001 2510 0002 8738 0608, on 9-26-07. (rdz) (Entered: 10/04/2007)
10/04/2007		Received Return Receipt of Mail Order by Certified Mail as to the District Attorney of New York County, which was served by Certified Mail # 7001 2510 0002 8738 0813, on 9-26-07. (rdz) (Entered: 10/04/2007)
10/12/2007	4	MEMORANDUM OF LAW in Support re: 1 Petition for Writ of Habeas Corpus. Document filed by Andre Smith. (djc) (Entered: 10/16/2007)
10/22/2007	5	ORDER: The petitioner should respond to the state's opposition to the petitioner's request to stay by 11/2/07. The respondent's time to respond to the petition is extended to 12/17/07, after the Court has had an opportunity to consider the motion to stay. The petitioner's reply is due 1/3/08. James T. Conway answer due 12/17/2007. Set Deadlines as to Motion to Stay (Replies due by 11/2/2007.) (Signed by Judge John G. Koeltl on 10/19/07) (db) Additional attachment(s) added on 10/26/2007 (Espinell, Antonia). (Entered: 10/23/2007)
12/07/2007	6	PRO SE MEMORANDUM dated 12/11/07 re: CHANGE OF ADDRESS for Andre Smith. New Address: 02-A-4600, Shawangunk Corr. Fac., PO Box 700, Wallkill, NY, 12589. (tro) (Entered: 12/12/2007)
12/10/2007	7	NOTICE OF APPEARANCE by Alice Abigail Wiseman on behalf of James T. Conway (djc) (Entered: 12/13/2007)
12/10/2007	8	NOTICE OF PRE-ANSWER MOTION to Dismiss above petition as untimely purs to the limitations provisions of 28 U.S.C. Section 2 244(d). Attached is Affidavit in Support. Document filed by James T. Conway.(djc) Modified on 12/13/2007 (djc). (Entered: 12/13/2007)
12/12/2007	9	ORDER, the petitioner should respond to the state's pre-Answer motion to dismiss by 1/14/08. The respondent's reply is due 1/29/08. Set Deadlines/Hearing as to ( Response due by 1/14/2008, Reply due by 1/29/2008.) (Signed by Judge John G. Koeltl on 12/12/07) (cd) (Entered: 12/12/2007)
01/23/2008	10	ENDORSED LETTER addressed to Judge John G. Koeltl from Alice Wiseman dated 1/22/08 re: Counsel for respondent requests a brief extension of time to reply, Until Monday February 4, 2008. ENDORSEMENT: Application GRANTED. So Ordered. (Signed by Judge John G. Koeltl on 1/22/08) (js) (Entered: 01/23/2008)
02/04/2008	11	AFFIRMATION of Alice Wiseman in Reply to Petitioner's Response to Respondent's Motion to Dismiss Petition. Document filed by James T. Conway. (djc) (Entered: 02/05/2008)

06/24/2008	<u>13</u>	OPINION AND ORDER; #96191 the petitioner's application for a writ of habeas corpus is dismissed. The Court declines to issue a certificate of appealability pursuant to 28 U.S.C. sections 2253(c) because the petitioner has failed to make a substantial showing of the denial of a constitutional right. The Clerk is directed to enter judgment in favor of the respondent and to close this case. (Signed by Judge John G. Koeltl on 6/24/08) (pl) Modified on 7/1/2008 (pl). (Entered: 06/24/2008)
06/24/2008		Transmission to Judgments and Orders Clerk. Transmitted re: <u>13</u> Memorandum & Opinion,, to the Judgments and Orders Clerk. (pl) (Entered: 06/24/2008)
06/25/2008	<u>14</u>	CLERK'S JUDGMENT in favor of James T. Conway against Andre Smith that the petition is dismissed and the case is closed. (Signed by J. Michael McMahon, Clerk on 6/25/08) (jf) (Additional attachment(s) added on 6/26/2008: # 1 notice of right to appeal) (ml). (Entered: 06/25/2008)
06/25/2008		Mailed notice of Right to Appeal to Pro Se Litigant(s): Andre Smith and to Attorney(s) of Record: Alice Abigail Wiseman. (ama) (Entered: 06/26/2008)
07/18/2008	<del>15</del> 15	REQUEST to Proceed in forma pauperis. Document filed by Andre Smith.(jmi) (Entered: 08/18/2008)
07/18/2008	<u>17</u>	NOTICE OF APPEAL from <u>14</u> Clerk's Judgment. Document filed by Andre Smith. Copies mailed to attorney(s) of record: District Attorney, NYC. (tp) (Entered: 09/03/2008)
07/18/2008		Appeal Remark as to <u>17</u> Notice of Appeal filed by Andre Smith. NO FEE. IFP GRANTED 8/21/08. COA DENIED 6/24/08. (tp) (Entered: 09/03/2008)
08/22/2008	<u>16</u>	ENDORSEMENT on Declaration in Support of Request to Proceed In Forma Pauperis, I.F.P. REQUEST IS GRANTED. (Signed by Judge John G. Koeltl on 8/21/08) (mme) (Entered: 08/22/2008)
09/03/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>17</u> Notice of Appeal. (tp) (Entered: 09/03/2008)
09/03/2008		Transmission of Notice of Appeal to the District Judge re: <u>17</u> Notice of Appeal. (tp) (Entered: 09/03/2008)